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Submission

to the Legislative Assembly of Ontario

on Bill 12

the Education Amendment Act (Miscellaneous), 1990

and Bill 13

the Ottawa-Carleton French-Language School Board Amendment Act, 1990

December, 1990

Ontario Public School Boards' Association

OPSBA Submission on Bills 12 & 13

The Ontario Public School Boards' Association ("OPSBA") is the representative body of public school boards in the Province of Ontario. It currently has 93 member boards which are responsible for the delivery of education to over one and a half million children, youths and adults in the Province.

We write to express our very strong objections to the Government's introduction of Bills 12 and 13 on December 4, 1990. Bill 12 is the Education Amendment Act (Miscellaneous) 1990 and Bill 13 is the Ottawa - Carleton French Language School Board Amendment Act, 1990. Both in terms of process and content, Bills 12 and 13 are unacceptable to the interests of public education in Ontario.

Process

These Bills are intended to affect major changes in a number of highly contentious areas relating to local governance of education. They are by no means "housekeeping" changes. Given the commitment of the Government to public consultation, the stated desire of the Government to have these major changes enacted as law before the end of 1990 is inexplicable.

Of equal concern to OPSBA is the fact that this legislation was tabled entirely without warning to our organization or our member boards. The senior officials in the Ministry of Education are well aware of the intense frustration we have experienced by the introduction, without notice, of these types of key amendments to the Education Act. We had been led to understand that our concerns about the process of consultation had been recognized and would, in future, be respected where possible. Indeed, while not agreeing with the results, we were very encouraged by the degree of information-sharing accorded us by the Ministry of Education as the "pooling" legislation came forward. A similar approach was adopted this spring when the Ministry attempted to address the changes necessitated by the Mahe decision and successfully resolved a lawsuit out of court.

The decision, therefore, to introduce these very significant amendments without any prior discussion with us is unacceptable.

OPSBA's concerns about lack of consultation were heightened by the Government's stated intent to rush these Bills through the legislative process to become law within a period of only 16 days. The announced Government timetable allows no opportunity for public hearings by a Legislative Committee.

These Bills were introduced on December 4th; there was no Ministerial statement in the House; there was no Ministry news release; there was no briefing session held for stakeholders; OPSBA was not able to obtain from the Government the text of the Bills until December 6th. On December 6th, the Government House Leader announced plans for Second Reading debate on December 13th. Government representatives informed OPSBA and the Opposition Parties that the Government wanted to have the Bills enacted before the current session recesses on December 20th. This legislative time table is unacceptable. We are fully aware of the time constraints imposed by the November 1991 municipal elections and are fully prepared to participate in a consultation process that would allow timely passage of needed amendments.

A final matter of process concerns the evident preference by the Government to proceed by regulation in areas more properly dealt with by legislation. These comments are most easily made in the context of addressing specific contents of the Bills, to which we shall now turn.

1. Separate School Board Extension by Purchase of Service

Currently, separate school boards may obtain access to provincial funding for secondary schools by electing to perform the duties of a secondary school board. Such funding is phased in at the rate of one additional grade per year. Section 5 of Bill 12 would provide for full funding immediately if the electing board provides instruction in all secondary school grades so long as the instruction is provided in a school operated by another board by means of an agreement with the other board. OPSBA cannot support the principle of extension by purchase of service. The primary reasons concern governance and financial consequences. Public school boards face the potential for crippling losses of local property tax assessment and separate school supporters face the potential loss of their representation on public school boards and thus the ability to be involved in policy decisions affecting the education of their students in public secondary schools.

OPSBA recognizes that a difficulty has arisen regarding the only Roman Catholic Separate School Board in Southern Ontario which has not yet extended, i.e. Haldimand - Norfolk. It is one thing for the Government to act to address the concern in Haldimand-Norfolk, in effect, to retroactively legalize the affairs of that school board. It is another matter to provide a change in legislation which would apply in all other situations in Ontario without regard to the differences in local circumstances.

In Northern Ontario, we are dealing with in most cases smaller communities with only a single secondary school which is public. The impact of extension in these circumstances could jeopardize the provision of public education at the secondary level. Because public boards have a statutory obligation to educate children of all backgrounds, they are in the position of having to accept agreements to provide services to coterminous or adjacent separate boards. Thus, a public board may find itself in one year having to educate by way of agreement essentially the same group of secondary students it did in the preceding year (with the attendant costs and duties) while at the same time experiencing the loss of assessment without any guarantee of financial compensation.

The compendium provided with these Bills states that 17 separate school boards have not extended; 16 of those boards are in Northern Ontario. The practical realities of secondary education across the vast distances of Northern Ontario mean that a separate board would have no alternative in many cases but to purchase services from its coterminous public board. If a separate board extends by purchase of secondary services from its coterminous public board, then the law eliminates the existing positions on public boards for separate school representatives. Under these circumstances, separate school supporters would end up with less say over policy decisions affecting secondary education then they currently have.

We are deeply troubled by the complete absence of any recognition of the financial impact on public school ratepayers. No legislative action should occur until a compensation guarantee is provided and impact studies are undertaken, completed and published.

To enact this legislation would, we submit, be irresponsible and would further promote the interests of separate school supporters at the real expense of those who have access to only one educational system. As a matter of principle, OPSBA strongly opposes this change and requests that Section 5 be deleted from Bill 12. We are prepared to support a change to rectify the current anomoly in Haldimand-Norfolk.

2. Manner of Establishment of Additional French-Language School Boards

Section 2 of Bill 12 would permit Cabinet, without the necessity of any public consultation or input, to create French-language boards by regulation. OPSBA supports the proper creation of additional French Language school boards; but OPSBA opposes this regulation-making authority. The issues associated with the creation of French-language boards are uniquely complex, affecting the rights and interests of existing public and separate school boards, as well as the rights of francophones who may be public or separate school supporters.

This inherent complexity was clearly recognized by the then Minister of Education, Sean Conway, when he announced on June 29, 1990 his intention to establish a French-Language Advisory Group and a French-Language Implementation Commission. The creation of these entities and the establishment of a rational, consultative procedure for the development of French-language boards was unanimously supported by our organization, the Ontario Separate Trustees' Association (OSSTA) and l'Association Francaise des Conseils Scolaires de l'Ontario (AFCSO). This unanimity demonstrates further that the creation of such French-language boards is regarded by the local school government "stakeholders" as one demanding careful reflection and input from a variety of sources.

The creation of French-language boards by regulation will not, in our submission, guarantee the quality and thoroughness of review which the matter demands. We strongly believe that the needs of the public are best served by continuing, at least at this early stage, to follow the legislative process already used in Ottawa-Carleton and Metropolitan Toronto. If the proposal in Bill 12 is intended to permit the Government to address one or two emergent situations in the Province, the proposal should then be appropriately limited to achieve this result.

Alternatively, if the Government is intent upon creating a power to establish French-language boards by regulation, we submit that such power should only be exercisable upon the recommendation of a French-Language Advisory Group, itself to be established by legislation, including the requirement of public hearings on request of interested persons or organizations. This would at least guarantee the kind of review which all of the affected groups have agreed is not only appropriate but necessary.

3. Determination of School Board Composition

OPSBA has a great deal of concern with regards to the changes proposed in the timelines for decision-making about the number and distribution of school trustees to be elected, the way in which crucial population data are obtained and the definition of applicable student enrolments.

a) Use of assessment data for determining population of electoral groups

OPSBA has no basis on which to determine the impact of the decision to use assessment data as opposed to election-year voter enumeration data for determining both the total board size and the geographic distribution of trustees within the jurisdiction of the board.

If comparative data were available, then OPSBA could decide whether to support this amendment. If the data were comparable, OPSBA supports the concept of boards having the information earlier in an election year than the current July deadline.

b) Timelines

OPSBA supports earlier timelines for decision-making proposed in the legislation. However, the underlying principle that has to be respected is that boards must have all necessary data before they have to make any decisions with regard to total board size and/or alternative distribution. These are considerations vital to the public interest in fair representation.

The proposed timelines of Bill 12 do not make sense in aiding decision making. A summary of the proposed timelines is listed below. It is not clear which rules are to be followed for boards with minority language sections since the current timelines (under legislation and regulation) do not coincide. The stated timelines for distribution of total number of trustees within a board cannot be followed if the board has a minority language section.

Bills 12 & 13 Proposed Timelines

January 1/91	Assessment Commissioner determines population of electoral groups (and thus total board size) based on Assessment Roll as returned for 1991 taxation
February 1/91	Board makes decision re increasing or decreasing total board size (December 31 for subsequent elections after 1991)
February 1/91	supervisory officer determines calculated enrolment and total calculated enrolment for purposes of minority language proportionality and distribution
February 15/91	Assessment Commissioner provides population data to municipal clerks and secretary of School Board
February 25/91	Distribution made (by regulation, within 10 days of receipt of data from Assessment Commissioner)
March 1/91	Confirmation of calculated enrolment by majority and minority language sections
March 2/91	Boards required to make alternative distribution (within 5 days of distribution being made)
March 15/91	Referral to Languages of Instruction Commission (LIC) if enrolment calculation not determined or confirmed
April 4/91	LIC shall make decision re calculated enrolment (within 20 days from date of referral)

There are a number of options to rationalize the timelines for decision-making so that boards are able to make informed decisions based on all available data.

Option 1: Do not make any changes for the 1991 election. There has not been an election conducted under the current provisions of the Act. Boards are aware of current legislative requirements and have made provisions to follow the legislation.

Option 2: Revise the timelines so that all boards (regardless of whether they have minority language sections) make decisions at the same time.

Two suggested timelines could be as follows:

OPSBA suggested Time Line #1
(Changes to Bill 12; no change to existing regulations)

January	1/91	Regional Assessment Commissioner determines population of electoral groups
February	1/91	Supervisory officer determines enrolment
March	1/91	Regional Assessment Commissioner provides data to boards. Boards confirm enrolment data
March	10/91	Distribution of trustee positions made by municipal clerks in consultation with Director of Education
March	15/91	Board makes decisions re a) increase or decrease total board size b) alternative distributions

OPSBA suggested Timeline #2
(Changes to Bill 12; changes to existing regulations)

January	1/91	Regional Assessment Commissioner determines population of electoral groups.
February	1/91	Supervisory Officer determines enrolments
February	15/91	Regional Assessment Commissioner provides population data to school boards. Boards confirm enrolment data
February	28/91	Distribution of trustee positions by municipal clerks in consultation with Director of Education.
March	31/91	School board determines a) increase or decrease in total board b) alternative distributions

These timelines enable boards to make informed decisions on the basis of all available data and early enough in an election year. Additional provisions have to be made for those boards in which enrolment calculations are referred to the LIC. These boards should be able to make their decisions re total board size and alternative distributions after the Language of Instruction Commission rules on the calculated enrolments.

c) **Calculation of Proportionality**

In keeping with the spirit of the Mahe decision, Bill 12 is intended to create proportionality within boards based upon student enrolment rather than electoral group size. While this change is obviously appropriate given recent judicial developments, OPSBA is concerned by the vagueness of the proposal and by the process which is intended to be used to resolve that vagueness.

The key element of the bill in this regard is Section 14(4) which introduces a new Rule 9. That proposed Rule uses as its crucial components the expressions "calculated enrolment" and "total calculated enrolment". These expressions are not, however, defined legislatively (ie. through a mechanism which is open to public scrutiny and input), but rather are to receive their definition through regulation at a later date (Bill 12, Section 15).

For the record, OPSBA submits that in making these calculations, the count should include all students listed in any prescribed Ministry register, whether for credit or otherwise, whether day school or otherwise, etc. This reflects both the language of the Mahe case (ie. all students "for whom the board is responsible") and, more importantly, the broad educational mandate extended school boards under the Education Act. A calculation simply on the basis of day school enrolment because of "administrative simplicity" will treat non-day school Charter rightholders as second-class citizens.

OPSBA also supports a calculation based upon residence. In other words, where a board has arranged for the education of some students "for whom it is responsible" in schools or programmes outside of its jurisdiction, those students should still be included in the calculated enrolment of that home board. Having said that, students resident within a board's jurisdiction who have elected to be educated outside either of the Province's two publicly-funded systems should not be included in any board's calculated enrolment.

Finally, OPSBA supports a calculation based upon the notion of "full-time equivalents" rather than one based upon head-count to account for full-time and part-time students.

Dealing with matters of principle, however, and for reasons similar to those expressed on Point 2, above, OPSBA strongly opposes the "internalization" of this matter within the Ministry of Education and the Cabinet. We want to reiterate that it is our understanding that the minimum number of minority language trustees remains as three and that any trustee position for which the minority language group does not qualify based on enrolment data is an add-on to the school board and does not reduce the numbers of trustees representing the majority language. The definitions to be used in these calculations must legislatively reflect the continuing role and mandate of public education in Ontario. They should not be subject simply to the regulatory inclinations of the government of the day. The importance of these definitions to this area is reflected by the fact that all other definitions applicable to these calculations have always been and will continue to be set out in the Act itself. There is no reason why an exception should be made in this case.

Having a regulatory (as compared to a legislative) approach may appear in this case to present an expeditious short-cut. As the New Democratic Party has so often stated while in opposition, this is no justification whatsoever for circumventing the traditional legislative process. We urge the Government to proceed in a more public and politically responsible fashion on these important issues.

Conclusion

Bills 12 and 13 are seriously flawed in terms of process and content. We urge the Government to accept and act upon the comments made above regarding the substance of the proposals. Failing that, we ask the Government to respect the legislative process by ensuring that these important policy decisions are made openly through the Legislature as a whole rather than in the exclusive environment of regulatory government. At very least, we require that this matter be referred to a Standing Committee of the Legislature for public hearings, in order that those vitally affected by these important changes may have their voices heard.

On a more general level, we sincerely hope that the degree of openness and prior consultation which, after many struggles, we had managed to achieve with the former government will be continued and expanded upon by the current government.